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2-27-2016

Commission on Sentencing
Helena Mt 59601

Honorable Commission Member,

We appreciate the opportunity to introduce an idea we believe falls within the scope of the Commission. Our topic may not be germane to what has been discussed thus far by the Commission, but we feel it has merit.

The good news is a record number of innocent people were exonerated in 2015. One hundred and forty-nine people were freed after each serving an average of fifteen years in American prisons. Twenty-seven of those 149 falsely confessed to their crimes due to overzealous interrogation techniques. Known as the Reid Techniques they are commonly used by law enforcement to extract confessions.

The shocking effectiveness of the Reid Techniques has been extensively studied by Doctor Saul Kassin now teaching at Williams College in Massachusetts. His credentials and a brief summary of his findings are attached to this letter. Also attached is a recent Washington Post article by Radley Balko detailing how false confessions are extracted from innocent people. Attachment three is a simple flow chart illustrating how the North Carolina Innocence Inquiry Commission works.

As you are aware the mounting interest in the exoneration process is being fueled by a renewed cultural and political assessment of America's criminal courts. Media exposure has sparked a passionate debate about certain prosecutorial tactics and the true meaning of reasonable doubt.

One can google: "dateline/video/full-episode-the-interrogation" to watch an ugly forty-five minute submersion into a serious problem more prevalent than most realize. Just viewing Part Four (nine minutes) is sufficient to gain an understanding of why false confessions are made by the innocent.

To proactively address the problem of false confessions, the Brooklyn New

York District Attorney, Kenneth Thompson, has prioritized a Conviction Integrity Unit in his own office. Thompson rightly says, "False confessions undermine the public's confidence and trust in our criminal justice system".

The notion prosecutors would spend time double checking past convictions is quite new. As in Montana, prosecutors traditionally view their role as convicting at trial and then defending their convictions during appeals.

So the bad news is most prosecutors, having vigorously sought a conviction, strongly resist reassessing whether new evidence, old evidence, or the total lack of evidence as in the Barry Beach case, undermines a hard won victory.

Therefore, we strongly encourage the establishment of a Montana Conviction Integrity Unit. The most simple method would be to follow one of several examples set by other entities across America. We suggest the North Carolina Innocence Inquiry Commission*. Regretfully the volume required to print a copy of the NC Innocence Inquiry Commission regulations for each Sentencing Commission member was simply prohibitive for us. However, to easily retrieve information and the regulations one can simply enter the title "North Carolina Innocence Inquiry Commission" into an internet search engine such as google.

Thank you for your time and consideration.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Sue Smith".

*The North Carolina Innocence Inquiry Commission was recommended as one of the best in the nation by Maurice Possley during a recent presentation at the Montana Innocence Project Open house in Missoula. Mr. Possley won the Pulitzer Prize for criminal justice investigative reporting during his 25 years at the Chicago Tribune and now works for the National Registry of Exonerations, a project of the University of Michigan Law School. He previously worked as a research fellow at the Santa Clara University Law School's Northern California Innocence Project where he co-authored the report "Preventable Error: Prosecutorial Misconduct in California 1997 - 2009".

Forging Forensic Science: Dr. Saul Kassin on the Truth behind False Confessions

Saul Kassin received his Ph.D. at the University of Connecticut. He later served as a U. S. Supreme Court Judicial Fellow, and was a postdoctoral research fellow and professor at Stanford University. He is the author of numerous books including "Psychology in Modules" and currently teaches psychology at Williams College in Massachusetts.

Kassin has studied false confessions from the Michael Crowe case in San Diego to the notorious "Central Park Five" and created a taxonomy of different types and causes of false confessions. He identified a handful of specific tactics prescribed in the Reid Technique (the commonly accepted set of practices used by American law enforcement) like lying to suspects about incriminating evidence, and minimizing practices that diminish the perceived consequences of confessing that should be "banned" from all interrogations.

Question: Why does confession evidence have such power in criminal cases?

Saul Kassin: Most reasonable people believe that a person would not confess unless they were actually guilty. The instinct is to believe confession evidence, especially when people don't understand the risks that can be associated with them. Confessions are often problematic, but are mostly viewed as if they have no strings attached. The literature is very clear on pointing out the problems, but the general public doesn't seem to know what those problems are.

When police lie about evidence it makes people feel trapped and confused. Suddenly, they're not sure if they did the crime or didn't do the crime. If police are claiming that they have the evidence, then people start thinking that they might have to make the best out of a bad situation. Human nature is such that all a person wants to do is get out of a bad situation as quickly as possible.

People are responsive to reward and punishment, and are likely to choose an immediate reward. Getting out of a bad situation now becomes more impactful than what is going to happen to me down the road. Interrogators minimize what's going to happen to the suspect to them in the future and focus on the immediate reward.

The Washington Post

The Watch | Opinion

Study: Sleep deprivation linked to false confessions

By Radley Balko February 9

Here's the write-up, [from New Scientist](#):

“To the average person it’s inconceivable how a false confession can happen,” says Saul Kassin of the John Jay College of Criminal Justice in New York, who has been an expert witness in dozens of wrongful conviction cases. He says the suspect usually sees it as a short-term measure, thinking that when all the evidence is in, their innocence will become obvious. “They believe that in the end they won’t have to pay for the confession.”

Such a gamble is hard for juries to understand, he says, but the latest study might help. In this, 88 people did various computer tasks as part of a fake experiment, then either slept for 8 hours or had to stay awake all night. The next morning they were accused of losing all the study data by pressing the “Escape” key, something they had been repeatedly warned against.

“It’s not as awful as confessing to murder but some of these people feel really bad – they think the experiment is ruined,” says Elizabeth Loftus of the University of California, Irvine, who took part in the work.

When asked to sign a statement admitting their guilt, half of those who were sleep deprived complied, compared with only 18 per cent of those who got a night’s rest.

There are some clear limitations to any study of false confessions — there’s just no way to really replicate the conditions under which they’re typically given. But given those limitations, this study is pretty compelling. It’s also intuitive. Sleep deprivation is a common method of torture. And as with other methods of torture, people will say what they think they need to say to get relief. It’s not hard to see why innocent people might be *more* likely to confess when sleep-deprived, especially if they believe there’s other evidence out there that will later clear them. A guilty person has more incentive to endure the discomfort.

We should also be suspicious of information obtained through sleep deprivation because of what it does to the body. From Psychology Today:

One of the first symptoms of sleep deprivation in humans is a disordering of thought and bursts of irrationality. Beyond 24 hours of deprivation people suffer huge drops in cognitive functions like accurate memory, coherent speech, and social competence. Eventually the victims suffer hallucinations and a total break with reality.

Whatever sounds come out of people's mouths at that point, whatever words they may seem to be saying, have to count as the least reliable kind of information one could possibly conceive. A mind tortured to that extremity will not provide anything that can be trusted as relevant to the real world. Even if the person really knew some vital bit of information (e.g., the location of a ticking time bomb), prolonged sleep deprivation will make it less likely the person could accurately and meaningfully communicate that information. Beyond a certain point the sleep deprived individual can no longer maintain enough cognitive coherence to say anything useful to anyone.

A recent study from the University of California-Irvine found that sleep deprivation can also make people susceptible to false memories, meaning that if coupled with suggestion, it not only can lead to a false confession, but also could make for a pretty convincing one.

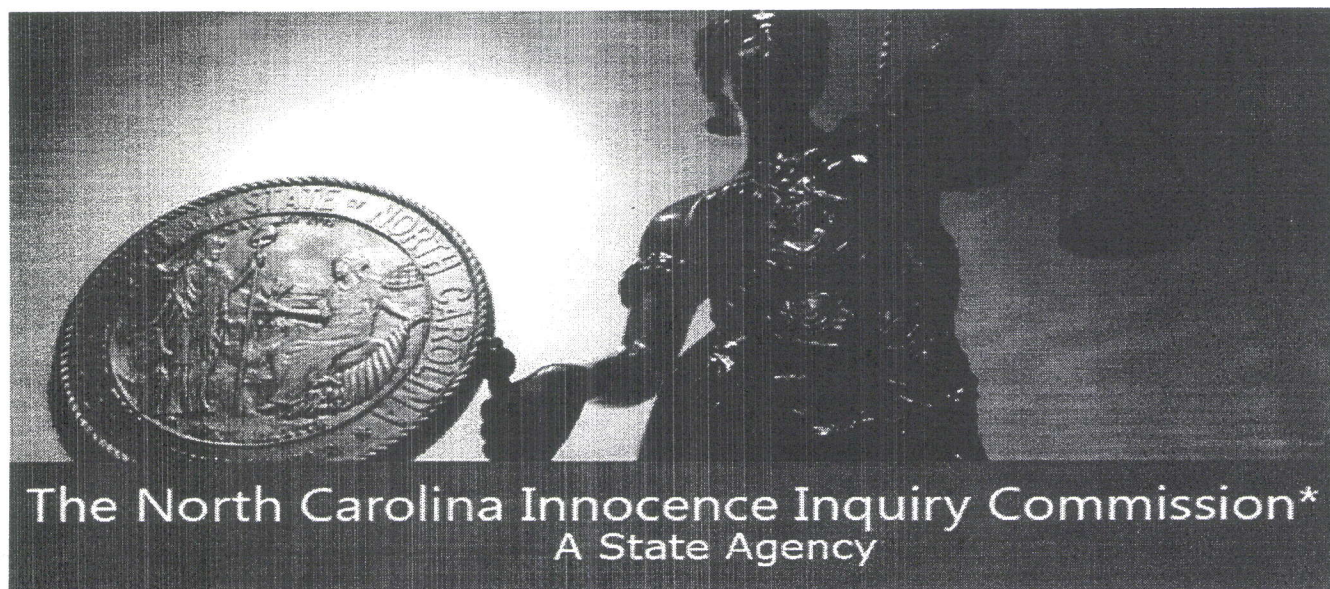
The New Scientist article notes several cases in which a sleep-deprived suspect was later exonerated, including Damon Thibodeaux, who was wrongly imprisoned in Louisiana for 15 years. There's also Daniel Anderson of Chicago, who spent 25 years in prison for a sleep-deprived confession. Frank Sterling served more than 18 years in a New York prison after falsely confessing to raping and killing a 74-year-old woman in 1988. His confession came after 12 straight hours of interrogation. He tried to explain what he was going through to New York magazine in 2010: "They just wore me down . . . I was just so tired. Remember, I hadn't had any sleep since about 2:30 Tuesday night . . . "It's like, 'Come on, guys, I'm tired—what do you want me to do, just confess to it?' It's like, yeah—I wanted to get it over with, get home, and get some sleep . . . Eighteen years and nine months later, I finally get to go home."

Sleep deprivation can even cause people to falsely admit to raping and killing their own children. Jerry Hobbs, an Illinois man who confessed to raping and murdering his daughter and her friend, spent five years in jail before he was cleared for the crimes. DNA had exonerated him after just two years, but citing his confession, prosecutors came up with bizarre alternate narratives to explain why the DNA found in the victims didn't come from Hobbs. Because he was out looking for his daughter the night before his

arrest, Hobbs hadn't slept in 24 hours. After his arrest, he was interrogated for 20 hours straight, which means he'd gone nearly two full days with no sleep before confessing. Kevin Fox, another Illinois man, falsely confessed to raping and killing his daughter after 14 straight hours of interrogation. He remained in jail for eight months until DNA testing exonerated him and implicated another man for the crime.

The effects of sleep deprivation can also be intensified by withholding food, or if the suspect is a juvenile, has a low IQ or suffers from mental illness. All of which makes for a pretty convincing argument for recording police interrogations from start to finish — we need assurance that confessions are voluntary and reliable and that those damning details about the crime known only to the police and the perpetrator weren't introduced (unintentionally or otherwise) by law enforcement officers.

Radley Balko blogs about criminal justice, the drug war and civil liberties for The Washington Post. He is the author of the book "Rise of the Warrior Cop: The Militarization of America's Police Forces."



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